IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.568 OF 2006

IN

SUMMARY SUIT NO.3426 OF 2004

...

Punjab National Bank ...Plaintiff

v/s.

Western Industrial Co.operative

Estate Limited ...Defendant

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Mr.Naushad Engineer with Mr.M.S.Dehlvi i/b N.S. & Himaytullah for the Plaintiff.

None for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 20TH FEBRUARY,2007

P.C.:

1. The Plaintiff's claim is based on the written

agreement between the parties. The Defendant has filed a reply. On the basis of the reply following can be taken as admitted position.

(i) Pursuant to the agreement dated 1-2-1992 premises belonging to the Defendant were taken on leave and licence by the Plaintiff. An amount of Rs.2,40,255/- was given as interest free deposit.

(ii) Admittedly the Plaintiff has handed over possession to the Defendant on 19th April, 2002.

(iii) Admittedly the amount of security deposit has not been refunded by the Defendant to the Plaintiff.

2. The defence of the Defendant is that an amount of Rs.7 lakh is payable by the Plaintiff to the Defendant towards Municipal taxes and that the Defendant has adjusted the amount of security deposit towards the municipal taxes which are due from the Plaintiff.

3. The Plaintiff has filed a rejoinder. The Plaintiff relies on the order dated 26th March, 2002 passed in T.E.& R. Suit No.196/209 of 2001 by the

Small Causes Court at Mumbai.

4. Perusal of that order shows that in the Small Causes Court the Defendant was claiming that the Plaintiff should be directed to deposit an amount of Rs.7,31,53/- in the court as that amount was due from the Plaintiff towards Municipal taxes. The Small Causes Court has, however, held that prima facie the Defendant has not been able to show that the Plaintiff is liable to pay that amount.

5. The learned Counsel appearing for the Plaintiff states that the order dated 26th March, 2002 passed by the Small Causes Court has become final and has not been challenged by the Defendant.

6. In this view of the matter, therefore, the Defendant has no defence to offer. The Defendant is, therefore, not entitled to leave to defend. The Plaintiff, on the contrary, is entitled to judgment. Summons for judgment is, therefore, granted. Suit of the Plaintiff is decreed in terms of prayer clauses (a) & (b). Refund of court fees as per rules.

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